IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 127 of 2005

BALVEER SINGH
V/S
DHARMVEER

Mr. GJ GUPTA, for the appellant / petitioner

Mr. SHYAM LADRECHA, for the Caveator respondent

Date of Order : 4.2.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

By the impugned order, the learned trial Court has dismissed the appellant's application for temporary injunction, seeking to restrain the respondent from forcibly interfering with his possession over the property in question.

The plaintiff came with a suit that the house No.1082 of Ward No.13, Purani Abadi, Ganganagar was purchased by the father of the parties, being Ramchandra, who died on 12.2.1976. Thereafter, in the year 1978, the property was partitioned between all the four brothers orally. Thereafter, the defendant, by an oral transaction, sold his portion of the property to the plaintiff, and delivered the possession in the year 1978 itself, in consideration of the defendant receiving 35 Tolas of gold. Though, despite repeated requests, sale deed was not executed in that regard. According to the plaintiff, thereafter, in the year 1978 itself, he constructed a tin shed, and a Chhappar for storing fodder, and tethering the cattle, and also opened a door for entrance and exit, to the portion of that property. Thus, the plaintiff also claimed to have perfected his title way-back in the year 1990, and having obtained the Patta from the Municipality on that basis. Inter alia, with these allegations, the suit was filed for declaration of title, and injunction against the defendant, restraining him forcibly dispossessing the plaintiff.

According to the defendant, the property was partitioned in the year 1978 between all the brothers, but the story of transferring his share to the plaintiff, in consideration of 35 Tolas of gold, was denied, and a stand was taken, that the Kachcha constructions had fallen down in rain, and therefore, it is the defendant, who erected

the tin shed, and Chappar. The possession of the plaintiff was denied. The Patta was alleged to have been obtained clandestinely. It was also pleaded that in the suit for partition, the plaintiff never disclosed the factum of his having obtained the Patta.

The learned trial Court after discussing the material available on record found, that since the defendant is living in Bikaner for last 30 years, if in his absence, the plaintiff happened to store fodder, or tether cattle, it cannot tantamount to his being in possession of the property. Filation of the earlier suit for partition was also noticed, wherein the present plaintiff had filed an affidavit, deposing that in his portion of the property, he has raised Pakka RCC construction. It was also noticed, that unless the plaintiff can be found to be in settled possession, he cannot be granted temporary injunction, mere stray act of temporary possession cannot entitle him to grant of a temporary injunction.

It was contended by learned counsel for the appellant, that proceedings under Section 145 Cr.P.C. were initiated by the respondent against the appellant, and therein vide order dated 4.6.2004, the possession of the appellant was found, and the parties were directed not to interfere with the possession, unless the matter is got decided from the Civil Court. Regarding partition suit, it was informed by the learned counsel that, that suit was filed on 7.2.2002, and was dismissed on 6.10.2004. According to learned counsel, since the partition suit has been dismissed, and in 145 proceedings, the respondent had been restrained from interfering with the appellant's possession, till the matter is got decided from the Civil Court, the appellant is entitled to injunction.

I have considered the submissions, and find, that it is a different story that after decision of the proceedings under Section 145, the partition suit had been dismissed on 6.10.2004. Learned counsel provided me the copy of the judgment dated 6.10.2004, passed in the said partition suit, and it is significant to note, that as transpires from that judgment, that in that suit, the present appellant had taken the stand about the share of the present respondent having been transferred to him in consideration of 35 Tolas of gold, and to be in possession since then, but then, no specific finding was given by the learned trial Court in that regard, and the suit was dismissed merely on the basis, that when the property is admittedly already partitioned, the suit for partition need not be entertained. Significantly, it was specifically noticed, that the defendant in that suit (being the present appellant), did not ask for any relief for injunction, and the learned trial Court agreed, that since no such

relief has been claimed, the Court is not required to make any comment about the present state of property. However, while reading the judgment, I find at page-7 thereof, that the statement of the present appellant, recorded in that suit as D.W.1 has been recapitulated, and therein, the appellant said to have deposed, that the parties are in possession of their respective shares for the last 27 years. Significantly, it is not the deposition therein, that this portion was ever purchased by the appellant from the defendant, as sought to be contended in the present suit.

In these circumstances, I do not find any error on the part of the learned trial Court in not finding prima-facie case in favour of the appellant.

The appeal thus, has no force, and is hereby dismissed summarily.

(N P GUPTA), J.

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